



Bay Area Clean Water Agencies

Leading the Way to Protect Our Bay
A Joint Powers Public Agency

P.O. Box 24055, MS 702
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April 16, 2007

VIA EMAIL AND FACSIMILE: (510) 622-2460

Mr. Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Comments on the Tentative Order For Mercury from Wastewater Discharges in the San Francisco Bay Region (CA0038849)

Dear Mr. Wolfe:

The Bay Area Clean Water Agencies (BACWA) appreciate the opportunity to comment on the Tentative Order for the Mercury Watershed Permit. BACWA members own and operate publicly-owned treatment works (POTWs) that discharge to San Francisco Bay and its tributaries. Collectively, BACWA's members serve over 6.5 million people in the nine-county Bay Area, treating all domestic, commercial and a significant amount of industrial wastewater. BACWA was formed to develop a region-wide understanding of the watershed protection and enhancement needs through reliance on sound technical, scientific, environmental and economic information and to ensure that this understanding leads to long-term stewardship of the San Francisco Bay Estuary. BACWA member agencies are public agencies, governed by elected officials and managed by professionals who are dedicated to protecting our water environment and the public health.

Our comments are summarized below. Attached you will also find the tentative order showing revisions in a mark-up format with the specific language that BACWA is requesting. BACWA wants to specifically thank the Water Board staff for developing this permit so that all interested parties can clearly see how the TMDL is intended to be implemented.

1. BACWA Supports the Watershed Approach to the Permit

BACWA supports the watershed approach to wasteload allocations and the subsequent watershed permit to implement the Mercury TMDL. We know of no other permit like this which regulates the point sources from both municipal and industrial wastewater under one permit. We believe that this is not only an issue of convenience, rather it establishes a method of developing and accounting for future offsets should the State develop a fair, equitable and voluntary program. We strongly urge this approach to be maintained and perhaps carried forward with other legacy pollutants which call for

watershed remedies.

This permit generally is consistent with the Mercury TMDL which was adopted by the Regional Water Board on August 9, 2006 with one major exception; an additional level of enforcement has been added in the permit on Table 6. Municipal -- Individual Mercury Effluent Limitations. There are a few other inconsistencies which we point out in other comments below.

Table 6 clearly requires another level of control over and above the aggregate allocation. The aggregate allocation must be included in the permit not only because it is in the approved TMDL, but also because it measures the annual mass loads from clean water agencies and industrial dischargers to determine watershed-wide compliance with the TMDL. The concentration triggers (Section V.C.1.), which are fully enforceable by the Regional Water Board, allow both clean water agencies and the regulatory agencies to view the trend of the effluent discharges to take corrective actions as needed. Table 6 provides the Regional Water Board and others with the ability to immediately take action against an individual agency without regard to trends or plans for correction and mitigation.

This three-tiered approach will ensure that each clean water agency knows what is expected for effluent quality. We do hope that with the addition of this third tier that neither the Regional Water Board nor the public will lose sight of the most important aspect of this permit, which is attainment of the aggregate allocation.

Both the Fact Sheet of this permit and the TMDL require a 40% reduction of effluent loading from clean water agencies by the end of 20 years. Achieving a 40% reduction at secondary treatment facilities will require the implementation of a voluntary, fair and equitable pollution offset and credits program, consistent with the Resolution No. 2005-0060. The remand Resolution adopted by the SWRCB specifically states that any offset policy developed for the purposes of reducing the impacts of mercury on the environment will not result in an undue burden on municipal wastewater. If a fair and equitable offset program cannot be developed, BACWA cannot be expected to meet the 40% reduction in the wasteload allocation that is required by the Mercury TMDL and as described in this permit Fact Sheet. Compliance through treatment would require a public investment of approximately \$300 million per year, every year, over 20 years (in 2004 dollars) to develop advanced treatment at each existing secondary facility. This would then allow these facilities to reduce from 14 kg/yr to 11/kg year. If no viable offset program is in place, rather than proceed with such an investment, BACWA will ask that the TMDL and the permit be reopened so that the 40% reduction of the WLA can be reviewed and revised.

2. POTWs Must Have 20 Years to Achieve the 40% Reduction in Mass Loading.

The mercury watershed permit includes information in the Fact Sheet regarding implementation of the TMDL in that the mercury mass loads must be reduced after the first 10 years, with final mercury reductions after 20 years. BACWA members will need

the full 20 years to implement the final 40% reductions, because it will take time to develop pollution prevention programs, to conduct the various studies that are planned to advance the knowledge of mercury fate and transport (and thereby be able to control mercury more effectively), and to develop a regional offset program, a critical aspect of the compliance attainability of the 40% reductions for POTWs (see also Comment No. 1 regarding offsets).

3. BACWA Urges that the Regional Water Board Make a Commitment Now to Combine Future Pollutant-Specific Permit Requirements into the Mercury Permit.

BACWA is very concerned that having several different NPDES permits that cover various pollutants will increase the likelihood that one or more will conflict with each other, and that multiple permits will be very confusing to municipal permittees. Therefore, we strongly request that the Regional Water Board make a commitment *now* to combine any future pollutant-specific permits with this one. See also suggested revisions for language in the attached mark-up.

4. The Schedule for Trigger Exceedance Action Plans Must be Revised to be Feasible

The current deadline for submittal of a trigger exceedance action plan (Table 12) is “Within 60 days of the initial trigger exceedance.” Many clean water agencies send effluent samples to a contract laboratory, which will return the analytical results within two to four weeks. Until these results are received, the clean water agencies are not even aware of an exceedance. To prepare an action plan a clean water agency will then begin accelerated sampling, and those samples also take time to be analyzed.

We understand that the Mercury TMDL indicates an intention for the plans to be submitted within 60 days. However, 60 days from the date of initial trigger exceedance is inadequate for most agencies. In addition, the scope of the required action plan is broad, and sufficient time should be provided to prepare a meaningful action plan and in some cases, procurement of services to implement the plan. Therefore, BACWA requests that the deadline for the plan in Table 12 be revised to “Within 6 months of receiving analytical results from accelerated monitoring.” BACWA believes that the Regional Water Board can make this change from the TMDL because the mercury permit is an implementation document with the practical details more thoroughly considered and the change in the requirement does not have any impact on water quality because mercury is a pollutant that is being addressed in a long term context. See also suggested revisions to language in the attached mark-up.

5. BACWA Supports the Mercury Discharge Adjustment for Recycled Wastewater Use by Industrial Dischargers

BACWA and BACWA member agencies are focused on the net environmental benefits that are realized through recycled water and we have encouraged Regional Water Board

staff and the State Water Resources Control Board (SWRCB) to look at regulatory actions to ensure that they are encouraging recycling rather than establishing barriers. BACWA especially appreciates and supports the inclusion of this section in the NPDES permit as it encourages the implementation of recycled water without jeopardizing compliance with mass loading limits.

BACWA suggest that the approach is difficult to grasp conceptually and tends to harm the agency that is attempting to provide reclaimed water for industrial reuse. EBMUD in cooperation with West County Agency currently have a reclaimed water project with Chevron and therefore these two agencies most impacted by this approach at this time. BACWA supports the EBMUD comments on adjustments for recycled water use by industrial discharges.

6. The Risk Reduction Will Be Most Effective as a Regional Collaboration.

BACWA has been working collaboratively with the other CEP Partners, with DOHS and OEHHA regarding Risk Reduction. Last December, we participated in a day long workshop to discuss the options that the CEP should consider for developing a region wide risk reduction program. We expect that CEP and BACWA to have a more developed plan by the end of June 2007, which may include investigations, and support of local Community Based Organizations as they work with specific at risk communities.

BACWA believes that the TMDL requires a cooperative approach to the development and implementation of the Risk Reduction across the region. This means that the development of programs that “mitigate health impacts” and “measure effectiveness” of a program will likely be undertaken by agencies that have some expertise and responsibility in these areas. BACWA strongly urges the Water Board to not hold BACWA member agencies responsible for measuring the effectiveness of the risk reduction program. The requirement and responsibility to ascertain the effectiveness of risk reduction more correctly falls to DOHS or other state health based organizations. The language in the permit seems to have the potential to shift the societal burden that should be shared by all of the state citizens from the legacy of mining practices directly to a handful of Bay-area cleanwater agencies that represent only a small fraction of the State. BACWA has concerns on the notion that is even possible, never mind appropriate, for cleanwater agencies to quantify risk reductions from these activities we may be required to perform.

Likewise the requirement to mitigate health impacts should not be the responsibility of clean water agencies. The TMDL requires that investigation into ways to mitigate health impacts be undertaken, therefore BACWA strongly objects to Provision V.C. 4 that clean water agencies mitigate health impacts. BACWA will continue to work as required by the TMDL and the permit on programs but we cannot accept the responsibility in a permit to measure the effects nor to potential adverse mitigate health impacts of eating fish.

7. The Federal Standard Provisions (Attachment D) Should Not be Included because these are Already in the Existing NPDES Permits (or are otherwise required).

In the interest of simplifying the permit, making it less confusing, and reducing the possibility of conflicting requirements, BACWA requests that the federal standard provisions (Attachment D) be removed from this permit. This section is unnecessary because all the covered permittees are already subject to these requirements elsewhere. In addition to removing Attachment D, the following language should be revised as shown in the attached tentative order mark-up.

8. The Monitoring and Reporting Program for this Permit Should More Clearly Specify that it is Applicable Only to Mercury.

In order to prevent confusion among permittees, BACWA requests language revisions to make it more clear that the permit Monitoring and Reporting Program focuses on mercury. Language in the permit should be revised as shown in the attached tentative order mark-up.

9. The Fact Sheet Should Indicate that the Mercury Requirements Do Not Place Limits on Growth

The following language should be inserted into the Fact Sheet:

“It is not the policy of the Regional Water Board to limit the municipal Dischargers' ability to accommodate growth by providing wastewater treatment services up to the full extent of design capacity. The Regional Water Board recognizes that the mass and concentration limits contained in this permit could have such a limiting effect, particularly if the removal efficiency of the POTW is diminished at higher flow rates despite all reasonable efforts by the Discharger. If it appears likely that such an effect will occur, then the Regional Water Board will use its best efforts to modify such limits so as to avoid such effect.”

10. Reference Should be Made to Chapter 3 for the Applicable Water Code Section of CEQA.

BACWA requests that the language in the permit (and similar section in the Fact Sheet) be revised as follows:

E. California Environmental Quality Act (CEQA). Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions in Chapter 3 of CEQA, Public Resources Code sections 21100-21177.

11. BACWA Supports the Special Studies for Municipal Wastewater Treatment Plants

BACWA believes that the special studies listed in the permit for municipal wastewater treatment plant are feasible, and will work with the Regional Water Board to ensure the studies are meaningful and useful, and that they advance the knowledge of mercury in San Francisco Bay.

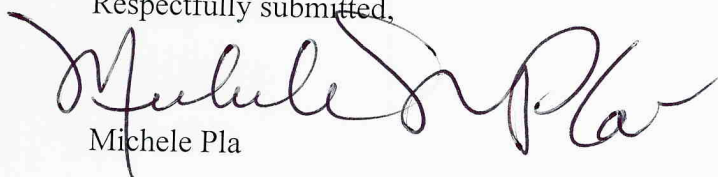
12. The Water Environment Research Foundation Collaborative Research Project With BACWA Has Begun.

As an example of BACWA's commitment to advancing the knowledge of mercury in San Francisco Bay, the Water Environment Research Foundation (WERF) study funded by BACWA has already begun. A nationally renowned Project Review Committee developed an RFP to which six responses were received. ArcTellis was selected and the research started in February 2007. This study is looking at the bioavailability of mercury from municipal wastewater treatment plants in comparison to other sources of mercury such as stormwater, mining sources, contaminated sediments and air deposition, among other sources. The major objectives of this study are as follows:

- Develop a working definition of bioavailable mercury
- Identify enhancers that promote production of bioavailable mercury in three aquatic environments (fresh, brackish and saline waters)
- Profile and rank sources of mercury with respect to bioavailable mercury
- Develop a two-tiered Guidance Document for use by wastewater utilities for a screening level and detailed assessment level

BACWA appreciates the opportunity to comment on the Mercury Watershed Permit and is dedicated to supporting improvement to the state of mercury knowledge in San Francisco Bay. I would be more than happy to meet with you to discuss our comments in more detail if you wish.

Respectfully submitted,



Michele Pla

BACWA Executive Director

cc: BACWA Executive Board
Lila Tang, Regional Water Quality Control Board
Thomas Mumley, Regional Water Quality Control Board